



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

July 26, 2020

BY ECF

The Honorable Sidney Stein
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Re: *United States v. Bryan Duncan*, S2 18 Cr. 289 (SHS)

Dear Judge Stein:

With the consent of counsel for the above-referenced defendant, the Government respectfully requests a one-month adjournment of the sentencing proceeding scheduled for tomorrow, July 27, 2020, at 11:00 a.m. On January 7, 2020, the Court announced the sentence it intends to impose but deferred the issues of restitution and forfeiture for a later date. Following the Government's January 23, 2020 submission regarding forfeiture (Dkt. No. 246), the defendant filed an opposition and requested a *Fatico* hearing (Dkt. No. 254). The Court scheduled a hearing for March 19, 2020, and set a deadline of February 28, 2020 for the parties to identify the witnesses they intend to call and the exhibits they intend to introduce at the March 19 hearing. (Dkt. No. 256.) On February 28, 2020, the Government submitted a letter brief with citations to the trial record, but advised the Court that the Government intended to call no witnesses and offer no exhibits at the hearing. (Dkt. No. 257.) The defendant filed nothing. The Court subsequently adjourned the hearing in light of COVID-19 and noted the defendant's failure to identify witnesses or exhibits. (Dkt. Nos. 256, 261). On May 18, 2020, the Court concluded that no hearing was necessary and determined that the forfeiture issue could be decided on the record already submitted. (Dkt. No. 273) After receiving correspondence from the defendant and his then-attorney, the Court granted the defendant's request to retain new counsel. The Court scheduled a status conference for July 10, 2020 and a sentencing proceeding for July 27, 2020. (Dkt. Nos. 282, 285.) At the July 10 conference, the defendant renewed his request for a forfeiture hearing and, for the first time, stated his intent to challenge the Government's proposed restitution figure. However, at a subsequent status conference on July 17, 2020, the defendant withdrew his request for a hearing and stated that he would make his arguments in a written submission to the Court.

On July 17, 2020, the defendant—for the first time—detailed his objections to the Government's requests for restitution and forfeiture. Since July 17, the Government has been investigating the defendant's arguments and, earlier this afternoon, learned information from a cooperating witness that may alter the Government's position on forfeiture. Accordingly, and regrettably at this late hour, the Government respectfully requests a one-month adjournment of tomorrow morning's sentencing proceeding. The adjournment will allow the Government to further investigate newly-obtained information about the percentage of fraudulent proceeds that are attributable to trip-and-fall cases verses non-trip-and-fall cases. Based on the defendant's July 17 submission, the Government also intends to revise its request for restitution, but no further investigation is required on that score. The proposed adjournment will also allow defense counsel, who recently tested positive for COVID-19, to appear at the sentencing proceeding in

person. The defendant, through Patrick Megaro, Esq., consents to the Government's request and asked the Government to advise the Court that he is unavailable the week of August 10, 2020 and on August 20, 21, and 28.

This is the Government's first request for an adjournment.

Respectfully submitted,

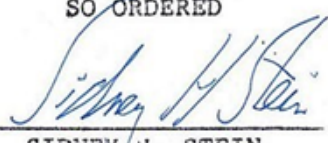
AUDREY STRAUSS
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By: /s/ Nicholas W. Chiuchiolo
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cc: Patrick Megaro, Esq. (Counsel for Bryan Duncan)

Request denied.

**Dated: New York, New York
July 27, 2020**

SO ORDERED

SIDNEY H. STEIN
U.S.D.J.